

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

WESTPORT BY THE SEA, PHASE III
CONDOMINIUM OWNERS ASSOCIATION, a
Washington Non-Profit Corporation,

Plaintiff,

v.

WEST AMERICAN INSURANCE COMPANY,
an Indiana Company; THE OHIO CASUALTY
INSURANCE COMPANY, a New Hampshire
Company; OHIO SECURITY INSURANCE
COMPANY, a New Hampshire Company;
LIBERTY MUTUAL HOLDING COMPANY,
INC., a Massachusetts Company; INSURANCE
COMPANY OF THE WEST, a California
Company; GREAT AMERICAN INSURANCE
COMPANY OF NEW YORK, a New York
Company; PACIFIC INSURANCE COMPANY,
LIMITED, a Connecticut Company; MT.
HAWLEY INSURANCE COMPANY, an Illinois
Company; WESTCHESTER SURPLUS LINES
INSURANCE COMPANY, a Georgia Company;
QBE SPECIALTY INSURANCE COMPANY, a
North Dakota Company; PRAETORIAN
SPECIALTY INSURANCE COMPANY, a North
Dakota Company; PRAETORIAN
INSURANCE COMPANY, a North Dakota
Company; and DOE INSURANCE COMPANIES
1-10,

Defendants.

NO.

**PLAINTIFF WESTPORT BY THE SEA,
PHASE III CONDOMINIUM OWNERS
ASSOCIATION'S COMPLAINT FOR
DECLARATORY RELIEF AND
MONETARY DAMAGES**

JURY DEMAND

1 Plaintiff Westport by the Sea, Phase III Condominium Owners Association (the
2 “Association”) alleges as follows:

3 **I. INTRODUCTION**

4 1.1 This is an action for declaratory judgement and money damages, seeking:

5 (A) A declaration of the rights, duties and liabilities of the parties with respect to certain
6 controverted issues under insurance policies issued to the Association, respectively, by West
7 American Insurance Company, The Ohio Casualty Insurance Company, Ohio Security Insurance
8 Company, Liberty Mutual Holding Company, Inc., Insurance Company of the West, Great
9 American Insurance Company of New York, Pacific Insurance Company, Ltd., Mt. Hawley
10 Insurance Company, Westchester Surplus Lines Insurance Company, QBE Specialty Insurance
11 Company, Praetorian Specialty Insurance Company, and Praetorian Insurance Company. The
12 Association is seeking a ruling that insurance policies issued by the above-listed insurers provide
13 coverage for the damage at the Westport Condominiums and that the above-listed insurers are
14 liable for money damages for the cost of investigating and repairing the damage at the Westport
15 Condominiums.

16 (B) Attorneys’ fees (including expert witness fees) and costs.

17 (C) Any other relief the Court deems just and equitable.

18 **II. PARTIES AND INSURANCE CONTRACTS**

19 2.1 The Association. The Association is a nonprofit corporation organized under the laws of
20 the state of Washington with its principal place of business located in Westport, Washington. The
21 Association has the duty to maintain the common elements and any limited common elements of
22 the Westport Condominiums for the common enjoyment of the unit owners. The Westport
23 Condominium complex consists of nine (9) buildings with one-hundred forty-four (144) residential
24 units located at 1600 Ocean Ave, Westport, WA (the “Westport Property”).

25 2.2 West American Insurance Company. West American Insurance Company (“West
26 American”) is incorporated under the laws of Indiana with its principal place of business in

Boston, Massachusetts. West American is registered and authorized to sell insurance in the State of

Washington. West American sold property insurance policies to the Association including but not limited to Policy Numbers: BZW0753344145 (in effect from at least May 1, 2005 until May 1, 2009); and BKS5334415 (in effect from at least May 1, 2012 until May 1, 2013). The Association is seeking coverage for all policies issued by West American.

2.3 The Ohio Casualty Insurance Company. The Ohio Casualty Insurance Company (“Ohio Casualty”) is incorporated under the laws of New Hampshire with its principal place of business in Boston, Massachusetts. Ohio Casualty sold property insurance policies to the Association including but not limited to Policy Numbers: BZW23139517 (from at least December 1, 2003 until March 10, 2005); and BKS5334415 (in effect from at least May 1, 2016 until May 1, 2018). The Association is seeking coverage for all policies issued by Ohio Casualty.

2.4 Ohio Security Insurance Company. Ohio Security Insurance Company (“Ohio Security”) is incorporated under the laws of New Hampshire with its principal place of business in Boston, Massachusetts. Ohio Security sold property insurance policies to the Association including but not limited to Policy Number: BKS5334415 (in effect from at least May 1, 2011 until May 1, 2012, and from at least May 1, 2013 until 2015, and from at least May 1, 2017 until May 1, 2021). The Association is seeking coverage for all policies issued by Ohio Security.

2.5 Liberty Mutual Holding Company, Inc. Liberty Mutual Holding Company (“Liberty Holding”) is incorporated under the laws of Massachusetts with its principal place of business in Boston, Massachusetts. Liberty Mutual Holding is the parent company for insurers that issued policies to the Association and is liable for these insurance companies.

2.6 Insurance Company of the West. Insurance Company of the West (“ICW”) is incorporated under the laws of California with its principal place of business in San Diego, California. ICW sold property insurance policies to the Association including but not limited to Policy Number: XHO215970000 (in effect from at least January 29, 2005 until January 29, 2006). The Association is seeking coverage for all policies issued by ICW.

2.7 Great American Insurance Company of New York. Great American Insurance Company of New York (“Great American”) is incorporated under the laws of New York with its principal place

1 of business in Cincinnati, Ohio. Great American sold property insurance policies to the Association
 2 including but not limited to Policy Number: IMP282732900 (in effect from at least January 29,
 3 2006 until January 1, 2007). The Association is seeking coverage for all policies issued by Great
 4 American.

5 2.8 Pacific Insurance Company, Ltd. Pacific Insurance Company, Ltd. (“Pacific”) is
 6 incorporated under the laws of Connecticut with its principal place of business in Hartford,
 7 Connecticut. Pacific sold property insurance policies to the Association including but not limited to
 8 Policy Numbers: ZG0033575 (in effect from at least January 29, 2006 until May 1, 2007);
 9 RV0001523 (in effect from at least May 1, 2007 until May 1, 2008); CV00152 (in effect from at
 10 least May 1, 2007 until May 1, 2008). The Association is seeking coverage for all policies issued
 11 by Pacific.

12 2.9 Mt. Hawley Insurance Company. Mt. Hawley Insurance Company (“Mt. Hawley”) is
 13 incorporated under the laws of Illinois with its principal place of business in Peoria, Illinois. Mt.
 14 Hawley sold property insurance policies to the Association including but not limited to Policy
 15 Number: MQE0600633 (in effect from at least May 1, 2007 until May 1, 2008). The Association is
 16 seeking coverage for all policies issued by Mt. Hawley.

17 2.10 Westchester Surplus Lines Insurance Company. Westchester Surplus Lines Insurance
 18 Company (“Westchester”) is incorporated under the laws of Georgia with its principal place of
 19 business in Philadelphia, Pennsylvania. Westchester sold property insurance policies to the
 20 Association including but not limited to Policy Number: IO8648141001 (in effect from at least
 21 May 1, 2008 until May 1, 2009; and from at least May 1, 2011 until May 1, 2012). The Association
 22 is seeking coverage for all policies issued by Westchester.

23 2.11 QBE Specialty Insurance Company. QBE Specialty Insurance Company (“QBE”) is
 24 incorporated under the laws of North Dakota with its principal place of business in Sun Prairie,
 25 Wisconsin. QBE sold property insurance policies to the Association including but not limited to
 26 Policy Numbers: SSE7193500 (in effect from at least May 1, 2009 until May 1, 2010);

ESE1105600 (in effect from at least May 1, 2011 until May 1, 2013); ESE1176600 (in effect from

1 at least May 1, 2013 until May 1, 2014). The Association is seeking coverage for all policies issued
2 by QBE.

3 2.12 Praetorian Specialty Insurance Company. Praetorian Specialty Insurance Company
4 (“Praetorian Specialty”) is incorporated under the laws of North Dakota with its principal place of
5 business in Sun Prairie, Wisconsin. Praetorian Specialty sold property insurance policies to the
6 Association including but not limited to Policy Number: S001560362 (in effect from at least May
7 1, 2007 until May 1, 2008). The Association is seeking coverage for all policies issued by
8 Praetorian Specialty.

9 2.13 Praetorian Insurance Company. Praetorian Insurance Company (“Praetorian”) is
10 incorporated under the laws of North Dakota with its principal place of business Sun Prairie,
11 Wisconsin. The Association is seeking coverage for all policies issued by Praetorian. The
12 Association is seeking coverage for all policies issued by Praetorian.

13 2.14 Doe Insurance Companies 1-10. Doe Insurance Companies 1-10 are currently unidentified
14 entities who, on information and belief, sold property insurance policies to the Association that
15 cover the Westport Condominium complex.

16 2.15 Westport Insurers. West American, Ohio Security, Ohio Casualty, Liberty Holding, ICW,
17 Great American, Pacific, Mt. Hawley, Westchester, QBE, Praetorian Specialty, Praetorian and Doe
18 Insurance Companies 1-10 shall be collectively referred to as the “Westport Insurers.”

19 2.16 Westport Policies. The policies issued to the Association by the Westport Insurers shall be
20 collectively referred to as the “Westport Policies.”

21 **III. JURISDICTION AND VENUE**

22 3.1 This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332
23 (diversity jurisdiction) as the parties are completely diverse in citizenship and the amount in
24 controversy exceeds \$75,000.

25 3.2 Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2) as the Westport Insurers
26 marketed and sold insurance to the Association in Grays Harbor County; a substantial part of the

1 events giving rise to the claim, including the breach of contract, occurred in Grays Harbor
2 County; and the insured condominium building is located in Grays Harbor County.

3 **IV. FACTS**

4 4.1 Incorporation by Reference. The Association re-alleges the allegations of paragraphs 1.1
5 through 3.2, above, as if fully set forth herein.

6 4.2 Tender to Westport Insurers. On September 2, 2021, the Association tendered claims for
7 insurance coverage to the Westport Insurers for hidden damage recently discovered by Evolution
8 Architecture, LLC (“Evolution”). The Association understands from Evolution that the cost to
9 repair the covered hidden damage at the Westport Property is substantially over the jurisdictional
10 limit of \$75,000.

11 **V. FIRST CLAIM AGAINST WESTPORT INSURERS FOR
DECLARATORY RELIEF THAT THE WESTPORT POLICIES PROVIDE COVERAGE**

12 5.1 Incorporation by Reference. The Association re-alleges and incorporates by reference the
13 allegations of paragraphs 1.1 through 4.2, above, as if fully set forth herein.

14 5.2 Declaratory Relief. The Association seeks declaratory relief from the Court in the form of
15 determinations regarding the following disputed issues:

16 (A) The Westport Policies cover the hidden damage to underlying building components
17 at the Westport Property discovered by Evolution.

18 (B) No exclusions, conditions, or limitations bar coverage under the Westport Policies.

19 (C) The loss or damage to the Westport Condominiums was incremental and
20 progressive. New damage commenced during each year of the Westport Policies.

21 (D) As a result, the Westport Policies cover the cost of investigating and repairing the
22 underlying building components at the Westport Property.

23 **VI. PRAYER FOR RELIEF**

24 WHEREFORE, the Association prays for judgment as follows:

25 6.1 Declaratory Judgment Regarding Coverage. A declaratory judgment that the Westport
26 Policies provide coverage as described herein.

6.2 Money Damages. For money damages in an amount to be proven at trial.

6.3 Attorneys' Fees and Costs of Suit. For reasonable attorneys' fees (including expert fees) and costs. *See Olympic Steamship Co. v. Centennial Ins. Co.*, 117 Wn.2d 37, 811 P.2d 673 (1991), and RCW 48.30.015.

6.4 Other Relief. For such other and further relief as the Court deems just and equitable.

IX. DEMAND FOR JURY TRIAL

7.1 Pursuant to Rule 38 of the Federal Rules of Civil Procedure, the Association demands trial by jury in this action of all issues so triable.

DATED this 2nd day of September, 2021.

STEIN, SUDWEEKS & STEIN, PLLC

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/s/ Justin D. Sudweeks

/s/ Daniel Stein

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